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EXAMINER
TANG, KAREN C

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Comment [K1]:

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/004,089
Filing Date: October 23, 2001
Appellant(s): FISCHER, WILLIAM A.

Fischer, William A.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/09/2008 appealing from the Office action mailed

1/10/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2003/0074421 A1	Kusano et al	04/17/2003
US 6,144,375	Jain et al	11/07/2000
	Official Notice	

(9) Grounds of Rejection

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically discloses or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

Claim 1-17, 24-26 and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Kusano et al hereinafter Kusano (US 2003/0074421) in view of Jain et al hereinafter Jain

(US 6,144,375).

1. Referring to Claims 1, 10, 24, and 33, Kusano discloses a method of configuring a user

interface of computer-assisted equipment (CE, 12 and 14 in Fig 1, refer to 0002) according to a

service program, comprising the steps of: said computer-assisted equipment transmitting a

message (request, refer to 0003) to a remote computer (web server, 16, refer to 0044);

said remote computer determining that said service program available on said remote computer

is suitable for use with said computer-assisted equipment, said determining being based on said

message (refer to 0016 and 0032); and

said remote computer influencing operation of said user interface of said computer-assisted

equipment, said determining being based on said message (refer to 0016 and 0029); and

said remote computer influencing operation of said user interface of said computer-assisted

equipment in accordance with said service program (refer to 0027, 0028, and 0031). The

computer-assisted equipment (CE, such as digital TV sets, DVD player.,etc.) comprising a

unique user interface that contains functions (each device receive information according to their

own preferences, refer to 0009) of each device of said computer-assisted equipment and

functions of the remote computer (receiving sources from the remote computer/web server); and

displaying the unique user interfaces on each respective device of the computer assisted

equipment (refer to 0009, 0033); and

said service program programming one or more of selectors to perform freeze frame, instant

replay (210, refer to Fig 7) and display pertinent text information (204, refer to Fig 7) by having

the computer assisted equipment receive content including audio (MP3, refer to 0046, Lines 19)

and text while a remote control device receives interface instructions and controls the content

(refer to 0046-0048).

Although Kusano discloses the invention substantially as claimed, Kusano is silent regarding

"the computer assisted equipment receive video information".

Jain, in analogous art discloses "computer assisted equipment receive video information" (refer

to Col 5, Lines 59) and "content is buffered in a memory device (refer to Col 7, Lines 35-47)".

It would have been obvious to one of ordinary skill in the art at the time of the invention was

made to combine Kusano and Jain because Jain's teaching of video information and receiving

and buffer the video information at the device would improve Kusano's system by providing

multi-media data such that the system is able to provide users with more flexible and interesting

viewing opportunities (Jain, Col 4, Lines 38-39)

2. Referring to Claim 2, Kusano discloses wherein said computer-assisted equipment provides

entertainment (refer to 0033).

3. Referring to Claim 3, Kusano discloses wherein said computer-assisted equipment is an audio

reproduction system (refer to 0033).

4. Referring to Claim 4, Kusano discloses wherein said computer-assisted equipment is a remote

control device that controls functions of a video entertainment system (DVD player, refer to

0037, and 0010), said video entertainment system receiving content from said remote computer

(refer to 0039).

5. Referring to Claim 5, Kusano discloses wherein said determining step includes said remote

computer informing said computer-assisted equipment that at least one additional service

program is available (refer to 0044), said computer-assisted equipment selecting from among

said service program and said at least one additional service program (refer to 0044).

6. Referring to Claim 6, Kusano discloses additionally comprising said remote computer

receiving a selection (refer to 0015) from said computer-assisted equipment, said selection

indicating which of said service program and said at least one additional service program a user
has selected (refer to 0008).

7. Referring to Claim 7, Kusano discloses wherein said remote computer is a general- purpose
computer (server is a computer, refer to 0011).

8. Referring to Claim 8, Kusano discloses wherein said message (request, refer to 0038) is a
service request that indicates that said computer-assisted equipment is ready to operate
cooperatively with said remote computer (ready to receive the request).

9. Referring to Claim 9, Kusano discloses further comprising said remote computer transmitting
content to said computer-assisted equipment under the control of said service program (refer to
0038-0041).

10. Referring to Claim 12, Kusano discloses wherein said remote computer is one of a portable
and a desktop computing device (server is a computer, refer to 0011).

11. Referring to Claim 13, Kusano discloses wherein said appliance is an audio system that
conveys music, and wherein said content includes a music file (refer to 0044).

12. Referring to Claim 14, Kusano discloses indicates the user input is a selection of a title of
said music file (refer to 0045).

13. Referring to Claim 15, Kusano discloses wherein said service program includes instructions that enable said audio system which the select a title of said music file (refer to 0045).

14. Referring to Claim 11, Kusano discloses wherein said service request includes an indication that said computer-assisted appliance is available and is ready to receive said service program (for communication between two devices to start, an indicate must be made).

15. Referring to Claim 25, Kusano discloses wherein said determining step includes receiving a selection as to which service program (songs/mp3 file, album) has been selected by a user of said computer-assisted equipment (refer to 0045).

16. Referring to Claim 16, Kusano discloses wherein said service program influences the function of a display located on said computer-assisted appliance (refer to 0045).

17. Referring to Claim 17, Kusano discloses wherein said service program influences a function of a remote control device used to control an entertainment device (refer to 0045).

18. Referring to Claim 26, Kusano discloses wherein said remote computer is interfaced to a network and wherein said remote computer communicates with a network location available on said network (refer to 0049).

19. Referring to Claim 34, Kusano discloses one or more computer-readable media , wherein said receiving a service query step includes receiving an indicator that informs said computer of a function performed by said computer-assisted appliance (refer to 0045-0049).

20. Referring to Claim 35, Kusano discloses one or more computer-readable media, wherein said determining step includes said computer searching through a list of service programs (refer to 0049).

21. Referring to Claim 36, Kusano discloses one or more computer-readable media, wherein said method further comprises said computer-assisted appliance prompting said user for said input (refer to 0044).

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kusano et al hereinafter Kusano (US 2003/0074421) in view of Official Notice.

22. Referring to Claim 27, Kusano discloses wherein said transmitting step is accomplished by way of transmitting said interface instruction (refer to 0015)

Kusano and Jain did not indicate the transmitting the interface instruction utilizing a wireless interface.

Official Notice is taken that it is obvious for ordinary skill in the art to utilizing the wireless interface to transmit instruction between two devices.

It would have been efficient to utilize the wireless technology so users can be provided a wireless communication thus they can be anywhere they wish to be.

(10) Response to Argument

The examiner summarizes the various points raised by the appellant and addresses replies individually.

Appellant argued that:

(1) Jain et al either alone or in combination of fail to disclose, teach or suggest "programming the selector to use buffered content to perform freeze frame and instant replay functions and displaying pertinent text information on the display while the remote control device receives interface instructions and controls the content."

(2) It is unreasonable to combine Kusano in view of Jain and because the references are considered together with the benefit of hindsight.

Examiner disagrees.

In reply to argument (1):

Office action dated 1/10/2008 has stated that it is Kusano rather than Jain, disclosed the alleged missing limitations "programming the selector to use buffered content to perform freeze frame and instant replay functions and displaying pertinent text information on the display while the remote control device receives interface instructions and controls the content."

Examiner would like to point out that the claims claimed otherwise. The pending claims specifically showed that the **service program programming one or more selectors** is separate limitation not relative to the process of **said computer-assisted equipment receiving content including audio, video and text while a remote control device receives interface instructions**

and controls the content. There is no clear reason for one to tie the two limitations since the

programming of the selector may occur prior to or after the reception of the interface instruction

or content.

          Examiner provides the claim limitation in question for convenience:

              *   *   *
              said computer-assisted equipment receiving content including audio, video
and text **while a remote control device receives interface instructions and controls
the content,** wherein after the content is received, the content is buffered in a memory
device; and
              said service program programming one or more of selectors to use the
buffered content to perform freeze frame and instant replay and for displaying
pertinent text information on the display.

              *   *   *

          In references to Kusano:

          Kusano clearly teaches to program an interface to comprises selector buttons (GUI, Fig.7

with buttons 210) where the buttons are able to perform playback (refer to 0032, last sentence:

instant replay), freezing frame (i.e., pause), stop, forward and rewind (see specific 210, Fig 7).

One of ordinary skill in the art would have recognized that the programming of the interface to

include these selector buttons would inherently include the programming of the functionalities of

these buttons. It would not be reasonable to include these buttons on the graphical user interface

but without programmably enabling the functions of them. It is inherent that when group of

selectors on a display (refer to Fig 7) contain capabilities to perform functionalities (e.g.,

playback, pause, .etc). These selectors must have been programmed when the display is made, in

order to provide these capabilities in the display.

To further elaborate on the inherency:

Kusano, further disclosed that these buttons are in faction functional. Kusano disclosed that the control function can be selected by a user ("Lisa may cause the application to play a selected album" refer to 0064). Kusano further teaches the user selecting one of the selector function e.g., freeze frame (i.e., pause) or instant replay (i.e., playback program, refer to 0031). This means the act of selecting a selector such as pause allows the user to play the stored content or performed the desired function and the buttons are in fact programmed. Furthermore, the user can selecting the freeze frame function (i.e., pause) for a selected content. This means the user is providing instruction to the selector (202, control functions 210 in Fig 7) to execute its functionality in order to use the buffered content (202, Fig 7) to perform freeze frame (i.e., pause - control function) and instant replay function (i.e., play - control function).

Kusano further discloses displaying the pertinent text information on the display (GUI displaying the playlists or song titles, refer to 202, 204, Fig 7) while receives instructions (i.e., user highlight a song or album in the music list and activates a "play" command on the GUI, par 0045) and controls the content (utilizing the selector, 208, Fig 7, to "play, rewind, forward, stop and freeze frame i.e., "pause" refer to par 0045 and 0031).

Kusano further teaches the computer assisted equipment to download content including audio and text while a purchase and download option is selected by the user (see 0067). This clearly reads on the claimed limitation of the computer assisted equipment receive content including audio and text while a remote control device receives interface instructions and controls the content (e.g. downloading is the interface instruction that triggers the control of content downloading).

Jain reference disclosed the downloading of video contents. Therefore, Kusano, in view of Jain, discloses the limitation as claimed by the appellant.

(2) In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Kusano and Jain because Jain's teaching of video information and receiving and buffer the video information at the device would improve Kusano's system by providing multi-media data such that the system is able to provide users with more flexible and interesting viewing opportunities (Jain, Col 4, Lines 38-39)

Thus, appellant's arguments are incorrect.

 (11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(12) Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Karen Tang

09/08/2008

/John Follansbee/

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